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JUN 09 2004

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL L. WILLIAMS, CLU
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:)	
)	
SINOR, LORETTA MAY)	
)	Case No. 04-11071-M
Debtor)	Chapter 13
)	
LORETTA MAY SINOR)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 04-1099-M
)	
)	
BENEFICIAL OKLAHOMA, INC.,)	
)	
Defendant.)	

JUDGMENT

Now on this 9th day of June, 2004, comes before the Court the Debtor's Complaint Objecting to Secured Claim of Beneficial Oklahoma, Inc. and Seeking to Enforce Rescission of Mortgage and for Damages for Violations of Truth in Lending Act, Home Ownership and Equity Protection Act, and Oklahoma Uniform Consumer Credit Code. The Court finds that the Complaint and summons were duly served on the Defendant, pursuant to Bankruptcy Rule 7004(b)(3) on the Defendant Beneficial Oklahoma, Inc. at the address of the registered service agent for the Defendant Delaware corporation and at the address listed on the proof of claim filed in the Chapter 13 bankruptcy by Beneficial Oklahoma, Inc., and that no Answer or response was filed within the time allowed.

The Court further finds:

1. This adversary proceeding is a core proceeding, brought by the Plaintiff Debtor pursuant to 11 U.S.C. § 502 to object to the secured claim of Defendant Beneficial Oklahoma, Inc. on the basis of the Truth in Lending Act, (“TILA”), 15 U.S.C. § 1601 *et seq.*, the Home Ownership and Equity Protection Act, (“HOEPA”), 15 U.S.C. §§ 1602(aa) and 1639, and the Oklahoma Uniform Consumer Credit Code, (“UCCC”), Okla. Stat. tit. 14A § 1-101 *et seq.*, and alternatively on the ground that the total amount claimed by Defendant Beneficial Oklahoma, Inc. is not the amount owed on the note and mortgage and that the amount of arrearage claimed by Defendant Beneficial Oklahoma, Inc. is incorrect, and also seeking damages in recoupment against the Defendant for violations of TILA, HOEPA and UCCC.

2. In January 2003, the Plaintiff Debtor Loretta May Sinor entered into a loan transaction with Defendant Beneficial Oklahoma, Inc.

3. Defendant Beneficial Oklahoma, Inc. obtained a mortgage on Plaintiff’s principal dwelling in connection with the transaction.

4. On March 15, 2004, Defendant Beneficial Oklahoma, Inc. filed a proof of claim, claiming a secured claim in the total amount of \$9,071.74 based on the above-described mortgage of the Plaintiff’s principal dwelling, and included within that amount an arrearage claim of \$2,110.32.

TRUTH IN LENDING AND UNIFORM CONSUMER CREDIT CODE CLAIMS

5. At all times relevant, Defendant Beneficial Oklahoma, Inc. was a creditor within the meaning of TILA and UCCC.

6. The Plaintiff's transaction with Defendant Beneficial Oklahoma, Inc. was a consumer credit transaction for personal, family, or household purposes, within the meaning of TILA, 15 U.S.C. § 1602 and UCCC, Okla. Stat. tit. 14A § 3-104.

7. This consumer credit transaction was subject to Plaintiff's right to rescind, as provided by TILA, 15 U.S.C. § 1635 and Regulation Z, 12 C.F.R. § 226.23 and UCCC, Okla. Stat. tit. 14A § 5-204.

8. In the course of this consumer credit transaction, Defendant Beneficial Oklahoma, Inc. violated TILA, 15 U.S.C. § 1635(a) and Regulation Z, 12 C.F.R. § 226.23(b) and (c) and UCCC, Okla. Stat. tit. 14A § 5-203(1) by failing to deliver to the Plaintiff two copies of the notice of right to rescind which clearly and conspicuously disclosed the Plaintiff's right to rescind the transaction and by failing to delay performance until the rescission period had expired.

9. In the course of this consumer credit transaction, Defendant Beneficial Oklahoma, Inc. violated TILA, 15 U.S.C. § 1635(a) and 1638(a)(3) and Regulation Z, 12 C.F.R. § 226.18(d), and UCCC, Okla. Stat. tit. 14A § 5-204(7) by failing to deliver to the Plaintiff "material disclosures" as required by TILA and UCCC, including failing to properly and accurately disclose the "finance charge" and the Annual Percentage Rate (APR).

10. The Plaintiff had a continuing right to rescind the transaction until the third business day after receiving the notice of right to rescind and all "material" disclosures.

11. On February 27, 2004, Plaintiff, through her attorney, notified Defendant Beneficial Oklahoma, Inc. that she was exercising her right to rescind the transaction pursuant to TILA.

12. Defendant Beneficial Oklahoma, Inc. received the notice that the Plaintiff was exercising her right to rescind the transaction.

13. Defendant Beneficial Oklahoma, Inc. failed to implement the Plaintiff's rescission of the transaction within twenty days as required by TILA, 15 U.S.C. § 1635(b) and 1641(c), and Regulation Z, 12 C.F.R. § 226.23(d)(2), and UCCC, Okla. Stat. tit. 14A § 5-204(2).

14. Defendant Beneficial Oklahoma, Inc. failed to return to the Plaintiff any money or property given by the Plaintiff to anyone as part of the transaction as required by TILA, 15 U.S.C. § 1635(b) and 1641(c), and Regulation Z, 12 C.F.R. § 226.23(d)(2), and UCCC, Okla. Stat. tit. 14A § 5-204(2).

15. Any security interest in the Plaintiff's dwelling held by Defendant Beneficial Oklahoma, Inc. is void pursuant to TILA, 15 U.S.C. § 1635(b) and UCCC, Okla. Stat. tit. 14A § 5-204(2).

16. As a result of the disclosure violations of TILA and UCCC, Defendant Beneficial Oklahoma, Inc. is liable to the Plaintiff for: statutory damages of \$2,000.00. 15 U.S.C. § 1640(a)(1), (2)(A)(iii), and (3) and Okla. Stat. tit. 14A § 5-203(1)(a), (cc), and (c).

17. As a result of the failure to rescind the transaction, Defendant Beneficial Oklahoma, Inc. is liable to the Plaintiff for: statutory damages in the amount of \$2,000.00. 15 U.S.C. § 1640(a)(1), (2)(A)(iii), and (3) and Okla. Stat. tit. 14A § 5-203(1)(a), (cc), and (c).

18. The Plaintiff is entitled to recoupment from Defendant Beneficial Oklahoma Inc.'s allowed claim for a total amount of statutory damages of \$4,000.00 due to these

violations of TILA, pursuant to 15 U.S.C. § 1640(e), and of UCCC, pursuant to Okla. Stat. tit. 14A § 5-205.

**HOME OWNERSHIP AND EQUITY PROTECTION ACT
AND UNIFORM CONSUMER CREDIT CODE CLAIMS**

19. The above-described consumer credit transaction was a high rate mortgage within the meaning of HOEPA, 15 U.S.C. §1602(aa)(1)(B) and UCCC Okla. Stat. tit. 14A § 1-301(10) in that the total “points and fees” charged the Plaintiff exceeded eight percent of the total loan amount and/or the interest rate exceeds by more than eight percent the yield on Treasury securities having comparable periods of maturity.

20. Because the transaction met the HOEPA and UCCC definition of a high rate mortgage the transaction was subject to additional disclosure requirements that were required to be provided three days in advance of the consummation of the transaction. 15 U.S.C. § 1639(a), (b); Regulation Z, 12 C.F.R. § 226.32(c), and Okla. Stat. tit. 14A § 3-309.4.

21. Defendant Beneficial Oklahoma, Inc. did not furnish the required HOEPA or UCCC disclosures to the Plaintiff three days before the consummation of the transaction.

22. Defendant Beneficial Oklahoma, Inc. did not furnish the required HOEPA and UCCC disclosures: Annual Percentage Rate (APR); and amount borrowed, as defined in Regulation Z, 12 C.F.R. § 226.32(C)(5).

23. Because of the failure of Defendant Beneficial Oklahoma, Inc. to provide the “material disclosures” as defined by 15 U.S.C. § 1602(u), required under HOEPA and UCCC, the Plaintiff has a continuing right to rescind the transaction.

24. On February 27, 2004, the Plaintiff, through her attorney, notified Defendant Beneficial Oklahoma, Inc. that she was exercising her right to rescind the transaction pursuant to HOEPA.

25. Defendant Beneficial Oklahoma, Inc. received the notice that the Plaintiff was exercising her right to rescind the transaction.

26. Defendant Beneficial Oklahoma, Inc. failed to implement the Plaintiff's rescission of the transaction within twenty days as required by 15 U.S.C. §1635(b), and Okla. Stat. tit. 14A § 5-204(2).

27. Defendant Beneficial Oklahoma, Inc. failed to return to the Plaintiff any money or property given by the Plaintiff to anyone as part of the transaction as required by 15 U.S.C. § 1635(b) and Okla. Stat. tit. 14A § 5-204(2).

28. Any security interest in the Plaintiff's dwelling held by Defendant Beneficial Oklahoma, Inc. is void pursuant to 15 U.S.C. § 1641(b) and Okla. Stat. tit. 14A § 5-203(5).

29. As a result of the disclosure violations of HOEPA and UCCC, Defendant Beneficial Oklahoma, Inc. is liable to the Plaintiff for: statutory damages in an amount equal to the sum of all finance charges and fees paid by the Plaintiff. 15 U.S.C. § 1640(a)(1), (3), and (4), and Okla. Stat. tit. 14A § 5-203(d)(1).

30. The sum of all finance charges paid by the Plaintiff in this transaction is \$2,031.45.

31. The Plaintiff is entitled to recoupment from Defendant Beneficial Oklahoma Inc.'s allowed claim for the statutory damages in the amount of \$2,031.45, pursuant to 15 U.S.C. § 1641(d) and Okla. Stat. tit. 14A § 5-205.

**TENDER DUE TO DEFENDANT BENEFICIAL OKLAHOMA INC.
UPON RESCISSION**

32. Upon rescission of the mortgage, the security interest in the Plaintiff's property is void and the Plaintiff is not liable for any amounts including finance charges. Regulation Z, 12 C.F.R. § 226.23(d)(1).

33. After rescission, the Defendant Beneficial Oklahoma, Inc. is required to return to the Plaintiff money given in connection with the transaction and the Defendant Beneficial Oklahoma, Inc. is entitled to tender from the Plaintiff of money or property given to the Plaintiff in connection with the transaction. Regulation Z, 12 C.F.R. § 226.23(d)(2).

34. The Plaintiff paid a total of \$351.72 in payments on the note and mortgage to Defendant Beneficial Oklahoma Inc.

35. The Plaintiff's tender obligation to the Defendant Beneficial Oklahoma Inc. is the \$9,071.74 principal of the note less the closing costs and other finance charges of \$1,728.10, equaling \$7,343.64, from which the \$351.72 in payments made by the Plaintiff must be offset for a total tender obligation of \$6,991.92.

36. The Plaintiff is entitled to a statutory damages award in recoupment for the TILA and UCCC violations in the amount of \$4,000.00, which shall be offset from the tender obligation of \$6,991.92.

37. The Plaintiff is entitled to an enhanced damages award in recoupment for violation of HOEPA and UCCC in the amount of \$2,031.45, which shall be offset from the tender obligation of \$6,991.92.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is entered against the Defendant Beneficial Oklahoma, Inc. as follows:

1. The mortgage securing the Plaintiff's obligation to Defendant Beneficial Oklahoma, Inc. is void;
2. The Plaintiff is granted judgment in recoupment for statutory damages totaling \$6,031.45;
3. The Plaintiff's tender obligation to the Defendant Beneficial Oklahoma, Inc. under TILA of \$6,991.92 is offset by the Plaintiff's judgment in recoupment in the amount of \$6,031.45;
4. The remaining \$960.47 owed by the Plaintiff on the obligation to Defendant Beneficial Oklahoma, Inc. is an unsecured nonpriority debt;
5. The secured claim filed by Defendant Beneficial Oklahoma, Inc. is disallowed.
6. The claim of Defendant Beneficial Oklahoma, Inc. is allowed as an unsecured claim in the amount of \$960.47.

June 9, 2004.


UNITED STATES BANKRUPTCY JUDGE

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